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**SEP 15 2008**

In re Application of :  
Heroux et al. :  
pplication No. 09/976,437 : LETTER REGARDING  
Filed: October 15, 2001 : PATENT TERM ADJUSTMENT  
Atty Docket No. 090900-0156 :

This letter is in response to the "COMMUNICATION REGARDING PATENT TERM ADJUSTMENT," filed March 14, 2008. Applicants request that the initial determination of patent term adjustment under 35 USC 154(b) be recalculated. The request is treated as a request pursuant to applicant's duty of good faith and candor to the Office.

The request for review of patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) at the time of the mailing of the Notice of Allowance is 60 days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On January 18, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 USC 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is one hundred twenty (120) days. The instant request for review of patent term adjustment was timely filed.<sup>1</sup>

The Office initially determined a patent term adjustment of one hundred twenty (120) days based on an adjustment for PTO delay

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<sup>1</sup> PALM Records indicate that the issue fee was paid on March 14, 2008.

The Office initially determined a patent term adjustment of nine hundred sixty-nine (969) days based on an adjustment for PTO delay of one thousand one hundred thirteen (1113) days, pursuant to 35 USC 154(b) and 37 CFR 1.703(a)(1). This was reduced by the following periods of applicant delay pursuant to 37 CFR 1.704(b): by three (3) days, for the filing of an amendment in response to a non-final Office action on December 30, 2005, three (3) months and three (3) days after the mailing of the non-final Office action on September 27, 2005; by four (4) days, for the filing of an amendment in response to a non-final Office action on October 10, 2006, three (3) months and four (4) days after the mailing of the non-final Office action on July 6, 2006; by 85 days, for the filing of a request for continued examination (RCE) on June 11, 2007, three (3) months and 85 days after the mailing of a final Office action on December 18, 2006; by 34 days, for the filing of a response to the non-final Office action on November 1, 2007, three (3) months and 34 days after the mailing of the non-final Office action on June 28, 2007, and by 18 days, for the filing of a supplemental amendment on November 19, 2007, or 18 days after the filing of an amendment on November 1, 2007.

Applicants are correct. The RCE was filed on June 18, 2007, not June 11, 2007. 37 CFR 1.704(b) states, in pertinent part that:

An applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed.

Accordingly, ninety-two (92) days of applicant delay should have been assessed, rather than 85 days, for filing of an RCE on June

18, 2007, or three months and 92 days after the mailing of the final Office action mailed December 18, 2006.


Further, a review of the record reveals that applicants should have been assessed four (4) days of reduction in patent term adjustment for the filing of an RCE on June 19, 2006, or three months and 4 days after the mailing of the final Office action mailed on March 15, 2006.

In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is nine hundred fifty-eight (958) days (1113 days of PTO delay, reduced by 155 (3+4+4+92+34+18) days of Applicant delay).

As this letter was submitted as an advisement to the Office of an error in applicants' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

The Office of Data Management has been advised of this decision. The application is thereby forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and if applicable, for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to Douglas I. Wood, Senior Petitions Attorney, at (571) 272-3231.

  
Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions

Enclosure: Revised PALM Calculation

## PTA Calculations for Application: 09/750668

Application Filing Date:	12/29/2000	PTO Delay (PTO):	1113
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	144
Post-Issue Petitions:	0	Total PTA (days):	958
PTO Delay Adjustment:	-11		

## File Contents History

Number	Date	Contents Description	PTO	APPL	START
90	09/08/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		4	
89	09/08/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		92	
88	09/08/2008	ADJUSTMENT OF PTA CALCULATION BY PTO	85		
75	02/01/2008	MAIL NOTICE OF ALLOWANCE			
74	01/31/2008	ISSUE REVISION COMPLETED			
73	01/31/2008	DOCUMENT VERIFICATION			
72	01/30/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
71	01/30/2008	NOTICE OF ALLOWABILITY			
70	11/25/2007	DATE FORWARDED TO EXAMINER			
69	11/19/2007	SUPPLEMENTAL RESPONSE		18	66
68	10/31/2007	MISCELLANEOUS INCOMING LETTER			
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66	11/01/2007	RESPONSE AFTER NON-FINAL ACTION		34	63
65	11/01/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
64	10/31/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
63	06/28/2007	MAIL NON-FINAL REJECTION			
62	06/22/2007	NON-FINAL REJECTION			
61	06/21/2007	DATE FORWARDED TO EXAMINER			
60	06/11/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
59	06/21/2007	DATE FORWARDED TO EXAMINER			
58	06/11/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)		85	51
57	06/21/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
56	06/10/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			

55	03/06/2007	MAIL ADVISORY ACTION (PTOL - 303)			
54	03/05/2007	ADVISORY ACTION (PTOL-303)			
53	03/02/2007	DATE FORWARDED TO EXAMINER			
52	02/23/2007	AMENDMENT AFTER FINAL REJECTION			
51	12/18/2006	MAIL FINAL REJECTION (PTOL - 326)			
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44	06/19/2006	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
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42	06/19/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)			
41	06/28/2006	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
40	06/19/2006	WORKFLOW - REQUEST FOR RCE - BEGIN			
39	03/21/2006	CASE DOCKETED TO EXAMINER IN GAU			
38	03/15/2006	MAIL FINAL REJECTION (PTOL - 326)			
37	03/14/2006	FINAL REJECTION			
36	01/13/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
35	09/29/2003	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
34	07/05/2001	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
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29	09/27/2005	NON-FINAL REJECTION			
28	09/20/2005	DATE FORWARDED TO EXAMINER			
27	09/14/2005	RESPONSE TO ELECTION / RESTRICTION FILED			
26	08/10/2005	MAIL SUPPLEMENTAL RESTRICTION / ELECTION REQUIREMENT			
25	08/10/2005	MAIL EXAMINER INTERVIEW SUMMARY (PTOL			

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21	03/15/2005	REQUIREMENT FOR RESTRICTION / ELECTION			
20	02/25/2005	CASE DOCKETED TO EXAMINER IN GAU			
19	02/04/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
18	01/13/2004	REFERENCE CAPTURE ON IDS			
17	09/29/2003	REFERENCE CAPTURE ON IDS			
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15	12/30/2004	CASE DOCKETED TO EXAMINER IN GAU			
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13.7	01/13/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
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12.7	09/29/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
12	09/29/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	03/09/2002	CASE DOCKETED TO EXAMINER IN GAU			
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10	07/05/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
9	08/20/2001	CASE DOCKETED TO EXAMINER IN GAU			
8	08/03/2001	APPLICATION DISPATCHED FROM OIPE			
7	04/12/2001	APPLICATION IS NOW COMPLETE			
6	07/23/2001	CORRESPONDENCE ADDRESS CHANGE			
5	04/12/2001	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
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## **EXPLANATION OF PTA CALCULATION**

## **EXPLANATION OF PTE CALCULATION**

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